



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN: 1506–AB49

Use of FinCEN Identifiers for Reporting Beneficial Ownership Information of Entities

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing a final rule to specify when and how entities required to report beneficial ownership information to FinCEN may use a FinCEN identifier to report the beneficial ownership information of certain related entities. These regulations amend FinCEN's Beneficial Ownership Information Reporting Requirements Rule, which implements Section 6403 of the Corporate Transparency Act (CTA). The CTA was enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act), which is itself part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA).

DATES: This rule is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT:

The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule sets out certain amendments to FinCEN's Beneficial Ownership Information Reporting Requirements Rule¹ (the Final Reporting Rule), which implements Section 6403 of the Corporate Transparency Act (CTA), to specify when and how entities required to report beneficial ownership information (BOI) to FinCEN may use a FinCEN identifier to report the BOI of certain related entities. The amendments specify how such entities

¹ Treasury, FinCEN, Beneficial Ownership Information Reporting Requirements, 87 FR 59498 (Sept. 30, 2022).

may use an entity's FinCEN identifier to fulfill their BOI reporting obligations under 31 CFR 1010.380.

II. Background

On December 8, 2021, FinCEN published a notice of proposed rulemaking for the Beneficial Ownership Information Reporting Requirements (the Reporting NPRM).² The Reporting NPRM proposed regulations specifying what BOI must be reported to FinCEN pursuant to CTA requirements, by whom, and when. In addition, the Reporting NPRM proposed processes for obtaining, updating, and using FinCEN identifiers. The Reporting NPRM included a 60-day comment period, which closed on February 7, 2022, and FinCEN received over 240 comments on the NPRM, including multiple comments about the proposed processes for obtaining, updating, and using FinCEN identifiers.

On September 30, 2022, FinCEN published the Final Reporting Rule, with an effective date of January 1, 2024.³ The Final Reporting Rule requires certain corporations, limited liability companies, and other similar entities (collectively, "reporting companies")⁴ to report certain identifying information about the beneficial owners who own or control such entities and the company applicants who form or register them.⁵ These requirements are intended to facilitate access to BOI for certain authorized recipients, including law enforcement and regulators, for the purposes of countering money laundering and the financing of terrorism, and for other specific purposes.⁶ The Final Reporting Rule requires reporting companies to report to FinCEN within prescribed time periods information about themselves, as well as information

² See U.S. Department of the Treasury (Treasury), FinCEN, Beneficial Ownership Information Reporting Requirements, 86 FR 69920 (December 8, 2021).

³ The Reporting Rule is the first in a series of rulemakings to implement the CTA, enacted on January 1, 2021, as part of the Anti-Money Laundering Act of 2020 and codified at 31 U.S.C. 5336. The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA.

⁴ See 31 U.S.C. 5336(a)(11).

⁵ See Treasury, FinCEN, Beneficial Ownership Information Reporting Requirements, 87 FR 59498, 59498-99 (Sept. 30, 2022).

⁶ Public Law 116-283, Section 6402 (Jan. 1, 2021).

about two categories of individuals: (1) the beneficial owners of the reporting company; and (2) the company applicants, who are the individuals who filed a document to create the reporting company or register it to do business.

The Final Reporting Rule also established the rules for individuals and entities to obtain and update FinCEN identifiers, and the rules for use of an individual's FinCEN identifier.

However, FinCEN declined to finalize the portion of the proposed rule pertaining to the use of an entity's FinCEN identifier. Rather, FinCEN re-proposed a small part of the Reporting NPRM pertaining to the use of reporting companies' FinCEN identifiers for public comment on December 16, 2022⁷, as part of the notice of proposed rulemaking on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities (the Access NPRM).

A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals who have provided FinCEN with their BOI and to reporting companies that have filed initial BOI reports.⁸ In the discussion that follows, FinCEN will refer to these as "individual FinCEN identifiers" and "entity FinCEN identifiers," respectively. The Final Reporting Rule finalized the use of individual FinCEN identifiers but not the use of entity FinCEN identifiers.

Concerning the latter, the CTA specifies that if an individual "is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that, directly or indirectly, holds an interest in the reporting company," the reporting company may report the appropriate entity's FinCEN identifier in lieu of providing the individual's BOI.⁹

FinCEN originally proposed incorporating this language in the Reporting NPRM without significant alteration or clarification. Some commenters to the Reporting NPRM, however, expressed concerns that the use of entity FinCEN identifiers could obscure the identities of beneficial owners in a manner that might result in greater secrecy or incomplete or misleading

⁷ 87 FR 77404 (Dec. 16, 2022).

⁸ 31 U.S.C. 5336(b)(3).

⁹ 31 U.S.C. 5336(b)(3)(C).

disclosures. Several commenters noted that the proposed language could be confusing. Others highlighted problems that could arise when the FinCEN identifier is used for reporting companies with ownership structures that involve multiple beneficial owners and intermediate entities. Persuaded by these comments, FinCEN did not adopt the proposed language in the Final Reporting Rule. Instead, FinCEN proposed new language in the Access NPRM establishing how reporting companies could use an entity's FinCEN identifier. Comments received in response to the Access NPRM both addressed this new proposal and raised other issues about entity FinCEN identifiers.

III. Use of FinCEN Identifiers for Entities

Proposed Rule. Proposed 31 CFR 1010.380(b)(4)(ii)(B) provided that a reporting company may report another entity's FinCEN identifier and full legal name in lieu of the information required under 31 CFR 1010.380(b)(1) with respect to the beneficial owners of the reporting company, but only if three conditions are met: (1) the entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company; (2) an individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through the entity; and (3) the beneficial owners of the entity and of the reporting company are the same individuals.¹⁰ This proposal reflected FinCEN's understanding that use of the entity FinCEN identifier would best satisfy the CTA's overall statutory scheme—in which reporting the intermediate entity's FinCEN identifier would be equivalent to reporting the BOI of the reporting company's beneficial owners—only if the two entities in fact had the same beneficial owners.

Comments Received. Several comments supported FinCEN's proposed formulation for reporting company use of entity FinCEN identifiers, noting that this approach reduced the risk that an entity FinCEN identifier could be used in ways that would obscure a reporting company's true beneficial owners. This had been a significant concern of commenters that were critical of

¹⁰ 87 FR 77404 (Dec. 16, 2022).

FinCEN's initial formulation in the Reporting NPRM. While generally supportive, two commenters proposed specific changes to the regulatory text to clarify FinCEN's revised approach and to specify that an entity FinCEN identifier could no longer be used if the BOI of either the reporting company or the entity whose FinCEN identifier was reported changed such that the two were no longer identical. Other commenters, without stating a position on FinCEN's proposed specification of three limiting criteria for an entity's use of a FinCEN identifier, expressed skepticism about the wisdom or desirability of both the entity FinCEN identifiers and the individual FinCEN identifiers in general. Others posed specific implementation questions, such as how a reporting company can be expected to verify FinCEN identifier information provided by a beneficial owner. One commenter questioned the value of allowing use of an entity FinCEN identifier when an individual is "or may be" a beneficial owner of a reporting company by virtue of an interest held in an intermediate entity, notwithstanding the fact that the phrase is in the CTA itself. Finally, commenters requested that FinCEN permit corporate service providers to apply for entity FinCEN identifiers on others' behalf.

Final Rule. FinCEN adopts the proposed rule, with certain revisions. The final rule incorporates changes to clarify the circumstances in which an entity FinCEN identifier could be used. These changes, which were specifically suggested by commenters, are: (1) to consistently refer to the entity whose FinCEN identifier the reporting company may use as "another entity" or "the other entity" rather than simply "the entity," in order to avoid confusion with the reporting company itself; and (2) to make clear that it is an individual's *ownership* interest in another entity that allows the reporting company to report the other entity's FinCEN identifier in lieu of the individual's information. FinCEN considers both of these changes to improve the clarity of the provision and make it more likely that reporting companies will use the FinCEN identifier as intended.

At the same time, however, FinCEN has not adopted all of the revisions suggested by commenters. For example, FinCEN has not removed the regulatory text that allows use of an

entity FinCEN identifier if a beneficial owner of the entity “may be” a beneficial owner of the reporting company by virtue of an interest held in an intermediate entity. As noted above, the CTA expressly permits this, and FinCEN retains the clause to give effect to the principle that a reporting company should be able to report an entity FinCEN identifier when it has a good faith belief that the use is appropriate.

FinCEN also declines to change the rule text to more specifically address the requirement that a reporting company update its BOI report if the beneficial owners of the entity whose entity FinCEN identifier the reporting company has previously reported cease to be the same as the beneficial owners of the reporting company. FinCEN believes that the language as proposed is already sufficiently clear on this point. The commenters who raised this issue correctly understand that if at any time the reportable beneficial owners of either the reporting company or the entity whose FinCEN identifier was reported changes such that the two are no longer identical, then the reporting company must file an update with FinCEN and can no longer report the relevant entity’s FinCEN identifier. That the commenters understood this requirement suggests that additional clarification is not necessary and, if appropriate, FinCEN may consider clarifying this requirement in the context of guidance or FAQs.

Finally, with respect to the comments that questioned whether the entity FinCEN identifier would actually be of use or value to reporting companies, FinCEN has acknowledged that it can only speculate as to the likely rate at which reporting companies will request entity FinCEN identifiers and the likelihood that they will report entity FinCEN identifiers in lieu of information about individual beneficial owners. FinCEN will monitor developments on this subject closely as the Final Reporting Rule is implemented.

IV. Regulatory Analysis

This rule is necessary to comply with and implement the CTA and is consistent with the CTA’s statutory mandate that FinCEN issue regulations regarding access to beneficial ownership

information.¹¹ Specifically, the rule amends the BOI reporting regulations to implement the provision of the CTA regarding the use of FinCEN identifiers codified at 31 U.S.C.

5336(b)(3)(C). The amendments specify how reporting companies would be able to use an entity's FinCEN identifier to fulfill their BOI reporting obligations under 31 CFR 1010.380. In particular, the rule establishes a process through which a reporting company may report another reporting company's entity FinCEN identifier and full legal name in lieu of the information otherwise required under 31 CFR 1010.380(b)(1), subject to certain limitations.

This rule affects reporting companies that choose to report the entity FinCEN identifier of another reporting company in their BOI report. It may also affect reporting companies deciding whether to request an entity FinCEN identifier.

FinCEN has analyzed the final rule as required under Executive Orders 12866, 13563, and 14094, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and the Paperwork Reduction Act. This final rule will not have an annual effect on the economy of \$200 million or otherwise constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, as amended. Pursuant to the Regulatory Flexibility Act, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities. FinCEN assessed that this rule results in no additional costs to small entities. Furthermore, pursuant to the Unfunded Mandates Reform Act, FinCEN concluded that the rule will not result in an expenditure of \$177 million or more annually by State, local, and Tribal governments or by the private sector.¹² Finally, FinCEN assesses that this rule will not result in any additional burden or costs considered under the framework of the Paperwork Reduction Act (PRA).

¹¹ 31 U.S.C. 5336(b)(4).

¹² The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of \$100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995, the year of the Unfunded Mandates Reform Act, as 71.823, and as 127.224 in 2022. See U.S. Bureau of Economic Analysis, "Table 1.1.9. Implicit Price Deflators for Gross Domestic Product" (accessed Friday, June 2, 2023). Thus, the inflation adjusted estimate for \$100 million is $127.224/71.823 \times 100 = \177 million.

FinCEN does not assess any additional quantifiable costs or benefits, measured in burden hours, associated with the rule beyond those separately considered in the Final Reporting Rule's regulatory impact analysis (RIA).^{13, 14} Further, FinCEN assesses that the rule is consistent with the assumption in the Final Reporting Rule's RIA that the cost associated with using entities' FinCEN identifiers is accounted for in the cost estimates for the BOI report. Additionally, the rule can reduce burden for reporting companies that choose to report another reporting company's FinCEN identifier because the filing reporting company will provide fewer pieces of information on its BOI report. However, FinCEN assesses such burden reduction is likely to be minimal relative to the total cost of filling out and submitting the report. Furthermore, it is unknown to FinCEN how many entities will choose to utilize entity FinCEN identifiers, as provided for in this rule. Accordingly, FinCEN does not estimate costs or benefits associated with this rule beyond what is stated in the Final Reporting Rule RIA.

The rule is statutorily mandated, and therefore, FinCEN has limited ability to implement alternatives. Nonetheless, FinCEN considered the following alternatives that would be available under the statute: (1) implementing the statutory language at 31 U.S.C. 5336(b)(3)(C) as written; and (2) implementing the language proposed in the Reporting NPRM at 31 CFR 1010.380(b)(4)(ii)(B). However, as explained in Sections II and III, FinCEN is promulgating this final rule to address ambiguities in the statutory text and concerns raised by commenters about the clarity of the provision proposed in the Reporting NPRM and the potential for misuse of entity FinCEN identifiers.

List of Subjects in 31 CFR Parts 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency,

¹³ See 87 FR 59577-59578 (Sept. 30, 2022).

¹⁴ The Final Reporting Rule's RIA did not estimate the number of reporting companies that will obtain FinCEN identifiers. A reporting company obtains a FinCEN identifier by either checking a box on its initial BOI report or submitting an updated BOI report with the box checked. Therefore, FinCEN assumed that the cost of reporting companies obtaining FinCEN identifiers was included in the initial BOI report cost estimates in the final BOI reporting rule RIA. See 87 FR 59578 (Sept. 30, 2022).

Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Federally recognized tribes, Foreign persons, Holding companies, Indian law, Indians, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Tribal government, Time.

Authority and Issuance

For the reasons set forth in the preamble, the U.S. Department of the Treasury and Financial Crimes Enforcement Network amend 31 CFR part 1010 as follows:

PART 1010 - GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5336; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307; sec. 2006, Pub. L. 114-41, 129 Stat. 458-459; sec. 701, Pub. L. 114-74, 129 Stat. 599.

2. Amend § 1010.380, added September 30, 2022 at 87 FR 59498, and effective January 1, 2024, by adding paragraph (b)(4)(ii)(B) to read as follows:

§ 1010.380 Reports of beneficial ownership information.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) A reporting company may report another entity's FinCEN identifier and full legal name in lieu of the information required under paragraph (b)(1)(ii) of this section with respect to the beneficial owners of the reporting company only if:

(I) The other entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company;

(2) An individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through an ownership interest in the other entity; and

(3) The beneficial owners of the other entity and of the reporting company are the same individuals.

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